

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kimberly Eldridge	Team: Team # 3	CCRB Case #: 201012951	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/04/2010 10:25 PM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 3/4/2012	EO SOL 3/4/2012	
Date/Time CV Reported Thu, 09/16/2010 8:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/22/2010 5:49 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			NARCBSI
2. SGT Andrew Hillery	01031	925457	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Martin Banghart	01819	905752	NARCBSI
2. DT3 David Luppino	04762	906674	NARCBSI
3. LT David Courtien	00000	906016	NARCBSI
4. DT2 Salvatore Desantis	04361	897333	NARCBSI
5. DT3 Brendan Obrien	06356	922883	NARCBSI
6. DT3 Matthew Fried	02889	934884	NARCBSI
7. DT3 Lawrence Cognato	00116	932475	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.SGT Andrew Hillery	Force: Sergeant Andrew Hillery used physical force against § 87(2)(b)	§ 87(2)(b)
B.SGT Andrew Hillery	Discourtesy: Sergeant Andrew Hillery spoke rudely to § 87(2)(b)	§ 87(2)(b)
C. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 16, 2010, § 87(2)(b) filed this complaint via phone with IAB on behalf of her son, § 87(2)(b) did not witness this incident. On September 22, 2010, IAB forwarded this complaint to the CCRB under log number 10-46597.

At approximately 10:25PM on September 4, 2010, members of the Staten Island Narcotics field team arrested § 87(2)(b) at the intersection of § 87(2)(b) in Staten Island. The following allegations resulted from their actions:

- **Allegation A) Force: Sergeant Andrew Hillery used physical force against § 87(2)(b)**
- **Allegation B) Discourtesy: Sergeant Andrew Hillery spoke rudely to § 87(2)(b)**

§ 87(2)(g)

- **Allegation C) Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b)

Arrest Photo and Movement Slip Photo

As per the CCRB's Monitoring Analysis Section (MAS), § 87(2)(b)'s arrest photo regarding this incident is not on file. In § 87(2)(b)'s Movement Slip Photo from Staten Island Central Bookings, he has redness and swelling in a circular formation around his right eye. § 87(2)(b) also has redness to the left side of his face near his eye. The date and time listed on the Movement Slip Photo is 1:13AM on September 5, 2010 (enc. B7).

Statements Made to Medical Personnel

On September 5, 2010, an ambulance responded to the 120th Precinct to treat § 87(2)(b) who told the EMT that he was hit in the face during his September 4, 2010 arrest and was suffering from a headache as a result (enc. D1). § 87(2)(b) was removed to § 87(2)(b), where he informed medical personnel that he was punched in the face and head multiple times by police officers during his arrest (enc. D2-D16). On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) after having a seizure (enc. D17-D39). § 87(2)(b) informed medical personnel that he had also suffered a seizure in June of 2010.

CCRB Statement

On October 14, 2010, § 87(2)(b) was interviewed in person at the CCRB (enc. B4-B14). § 87(2)(b)'s statement is summarized below and the inconsistencies are noted.

Shortly before 10:30PM on September 4, 2010, § 87(2)(b) left his home at § 87(2)(b) in Staten Island to walk to a fast food restaurant called "Yummy Taco." In his right hand, § 87(2)(b) held three or four Oxycodone pills. § 87(2)(b) has a prescription for the pills and receives 135 pills per month. § 87(2)(b) has developed a dependency and always carries pills with him in case he needs them to treat his pre-existing back injury or he needs them to satisfy his addiction. § 87(2)(b) usually carries around the bottle, but on this occasion, he did not do so. § 87(2)(b) carried the loose pills in his hand because he feared that he would eventually have a run in with the cops and noted that if there was a problem with the cops, he planned on just swallowing the pills.

§ 87(2)(b)'s house is on a corner, so he exited his property via a gate that leads onto § 87(2)(b). It was dark outside and there was not much light. Initially, § 87(2)(b) stated that as he was walking, he received a text message from his friend, § 87(2)(b), asking him to come outside. As the interview progressed, however, § 87(2)(b) stated that he did not see the message until after he had been arrested. § 87(2)(b) then stated that he did not have his cell phone on him at the time of the incident. After § 87(2)(b) was arrested, he learned that § 87(2)(b) had been arrested earlier that evening and that the officers who arrested him used § 87(2)(b) cell phone to send the message to § 87(2)(b).

Initially, § 87(2)(b) stated that upon leaving his property, he observed four unknown cars parked fifty feet away on § 87(2)(b). As the interview progressed however, § 87(2)(b) stated that he only saw an older dark colored sedan (possibly a maroon Mitsubishi Gallant) parked fifty feet away. Four people were sitting inside of the car. All of the windows were up and tinted. § 87(2)(b) approached the passenger side of the vehicle and looked inside the front passenger side window to ascertain if § 87(2)(b) or anyone else he knew was inside of the vehicle. When § 87(2)(b) realized that he did not recognize the people in the car, he placed his left hand up at chest level in front of his person and stepped backwards. None of the individuals in the vehicle said anything to § 87(2)(b). § 87(2)(b) apologized for intruding and proceeded to walk around the front of the vehicle to get to the sidewalk. As he did so, the person who was sitting in the rear passenger side seat, PO1 (who was identified via the investigation as Sergeant Andrew Hillery of Staten Island Narcotics), exited the vehicle, approached § 87(2)(b) from behind, and punched § 87(2)(b) in or near his right eye. The blow caused § 87(2)(b) to lose his balance and fall forward. § 87(2)(b) reached out to break his fall and as he did so, the pills fell out of his hand. As § 87(2)(b) was falling, Sergeant Hillery stated, "We're the police, asshole." Sergeant Hillery then punched § 87(2)(b) on the right side of his face. § 87(2)(b) landed on his knees on the curb and fell forward onto his chest. § 87(2)(b)'s face was in the grass near the curb. § 87(2)(b)'s hands were flat on the ground above his head. § 87(2)(b) repeatedly stated that he did not do anything wrong. § 87(2)(b) believes that all of the officers exited the vehicle and punched and kicked him as he was on the ground. The officers struck § 87(2)(b) in his head, face, and the right side of his body. § 87(2)(b) did not move any parts of his body because he was unable to do so with the four officers striking him. § 87(2)(b) believed that he was struck over ten times, but could not say who hit him where. The officers did not say anything to § 87(2)(b) as they struck him. § 87(2)(b) noted that all four officers were white males who were well over 6'0" tall and weighed over 240 pounds. § 87(2)(b) was unable to provide any further descriptions of any of the officers and noted that they all looked similar.

After § 87(2)(b) was handcuffed, an unmarked police van arrived at the location. § 87(2)(b) who is friends with § 87(2)(b)'s fiancée, was also in the area, presumably to visit § 87(2)(b)'s fiancée. § 87(2)(b) had not seen or interacted with § 87(2)(b) prior to his arrest, but noted that § 87(2)(b) was also arrested because the officers believed that she purchased drugs from him. § 87(2)(b) denied selling drugs to § 87(2)(b) who later explained to him that she had observed what happened between him and the officers.

As a result of this incident, § 87(2)(b)'s right eye was swollen shut, he had bruises on his face and body, abrasions on his knees and a cracked rib on his right side. § 87(2)(b) also suffered an asthma attack while in custody. Shortly after transporting § 87(2)(b) to the 120th Precinct, § 87(2)(b) was taken to § 87(2)(b) to be treated for his asthma and his injuries. On or about § 87(2)(b), § 87(2)(b) suffered a seizure and went to § 87(2)(b). § 87(2)(b) did not have a history of seizures and had not had one prior to this incident so he believed that the seizures were caused by the force that the officers used against him.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Phone Statement

On February 10, 2011, § 87(2)(b) provided a brief phone statement to the CCRB (enc. B15). § 87(2)(b)'s statement was summarized below.

Shortly before 10:30PM on September 4, 2010, § 87(2)(b) and § 87(2)(b) were walking to § 87(2)(b)'s vehicle, which was parked on § 87(2)(b) § 87(2)(b) when § 87(2)(b) observed a silver Hyundai driving around the block. The Hyundai came to a stop at the curb next to § 87(2)(b) and § 87(2)(b) at which time four men in plainclothes exited the vehicle, converged upon § 87(2)(b) pushed him to the ground, and began to punch and kick him in the face and torso. § 87(2)(b) was unable to articulate what occurred immediately prior to the men pushing § 87(2)(b) to the ground and was unable to describe how they pushed § 87(2)(b) to the ground. § 87(2)(b) did not hear any of the men say anything when they exited the vehicle. As soon as this occurred, § 87(2)(b) got into her vehicle and drove away because she did not know who the men were who were attacking § 87(2)(b) and she was scared that she would also be attacked. § 87(2)(b) noted that she did not see much of what occurred, and that she did not observe any additional interactions that § 87(2)(b) had with the men. § 87(2)(b) did not know that the men were police officers until she was pulled over a short time later by a different police officer who was wearing plainclothes and of whom she was unable to provide a detailed description. As § 87(2)(b) was with the officer who pulled her over, the four officers who stopped § 87(2)(b) PO1: a white male who was taller and bigger than the other officers, had dark hair, and an eye twitch, PO2: a shorter, older white male who had salt and pepper hair, PO3: a skinny Italian male with a big nose, and PO4: a white male in his 50s who had dark hair, arrived at the scene and bragged about how they beat § 87(2)(b) up. § 87(2)(b) believed that one of the aforementioned four officers may have been her arresting officer, but she was not sure.

NYPD Statements

Witness Officer: DETECTIVE SALVATORE DESANTIS (Staten Island Narcotics)

- *Detective Salvatore Desantis is a § 87(2)(b)-old white male who is 5'9" tall and weighs 205 pounds. Detective Desantis has brown hair and brown eyes.*
- *On September 4, 2010, Detective Desantis worked from 3:27PM to 2:00AM the next morning. Detective Desantis was dressed in plainclothes and was assigned to the chase auto (a tan Hyundai) of his Staten Island Narcotics field team. Initially, Detective Desantis was working with Detective Brendan O'Brien, but at 8:30PM, Detective O'Brien took lost time. At 9:00PM, Detective Desantis began to work with Sergeant Hillery, who was also dressed in plainclothes.*

Memo Book

Detective Desantis had two memo book entries regarding this incident (enc. C1-C3). At 9:10PM, one person was arrested at White Street and St. Johns Avenue. At 10:25PM, two people were arrested at § 87(2)(b) § 87(2)(b)

CCRB Statement

On January 4, 2011, Detective Desantis was interviewed at the CCRB (enc. C4-C5). His statement is summarized below.

After picking up Sergeant Hillery at their command, Detective Desantis and Sergeant Hillery went to a known KITE location, which is a location for which a civilian complainant regarding drug activity has been filed. In regards to the KITE location at which they were positioned, § 87(2)(b), they had received a complaint from someone who stated that the male individual, identified as § 87(2)(b), who lives in the first floor apartment in the house at the aforementioned intersection was selling narcotics (prescription drugs such as Vicodin, Percocet, and Oxycodone) from his residence. § 87(2)(b) had been under investigation by Staten Island Narcotics for two months prior to this incident and during that time, different members of the field team had been set up at the location to observe § 87(2)(b) on numerous occasions. Detective Desantis specifically observed § 87(2)(b) make drug transactions several times, and all of § 87(2)(b)'s transactions followed the same pattern. When making a transaction, § 87(2)(b) would exit his house via his backdoor, which is on § 87(2)(b). The area is dark, but there is a light above § 87(2)(b).

§ 87(2)(b)'s backdoor that comes on every time he exits his house. The light is bright enough to illuminate § 87(2)(b) the area surrounding the backdoor, the sidewalk in front of the door, and several car lengths down the block.

On the night of September 4, 2010, Sergeant Hillery and Detective Desantis had a clear line of vision to § 87(2)(b)'s backdoor. They were the only two officers in the vehicle at that time and did not have sight of the other members of their field team. At 10:10PM, they observed § 87(2)(b) exit his home via the § 87(2)(b) exit and exchange drugs for money with another male, identified as § 87(2)(b), who had arrived on foot. After the exchange, Detective Desantis and Sergeant Hillery followed § 87(2)(b) until he was a few blocks away and arrested him without incident. They then radioed for the rest of the field team to respond. The A/O's car and the prisoner van arrived and took custody of § 87(2)(b). Sergeant Hillery and Detective Desantis copied down § 87(2)(b) information and returned to the KITE location. Shortly thereafter, they observed § 87(2)(b) exit his house via the § 87(2)(b) exit and walk down § 87(2)(b) to a white vehicle that was parked at the end of the block. § 87(2)(b) stood in the street on the driver's side of the vehicle at which time a white female who was sitting inside rolled down the window. § 87(2)(b) and the female, identified as § 87(2)(b) exchanged drugs for American currency. Detective Desantis and Sergeant Hillery drove closer, exited their vehicle, and approached § 87(2)(b) and § 87(2)(b) who backed her car up and sped away, turning down White Street. Detective Desantis put a description of § 87(2)(b) her vehicle, and the direction that she was headed over the radio so that the rest of the field team could apprehend her. § 87(2)(b) turned around and attempted to run, but Sergeant Hillery grabbed his arms. Detective Desantis ran towards them, but § 87(2)(b) pulled away from Sergeant Hillery and began to run back towards his house. Detective Desantis yelled, "Police! Don't move! Put your hands up!" Detective Desantis did not use profanity and did not see or hear Sergeant Hillery do so. Sergeant Hillery was running on the sidewalk and Detective Desantis was running in the street. § 87(2)(b) who was also running in the street, attempted to run onto the sidewalk, but Sergeant Hillery cut him off. Sergeant Hillery grabbed § 87(2)(b)'s arm and placed a handcuff on it. § 87(2)(b) however, pulled his arm away. Detective Desantis approached § 87(2)(b) from the street and tried to grab his arms, but § 87(2)(b) pushed Detective Desantis in the chest. Detective Desantis stumbled backwards, falling off the curb and hitting the back of a parked car. As Detective Desantis was falling, he grabbed § 87(2)(b)'s shirt and pulled § 87(2)(b) towards him. Detective Desantis and § 87(2)(b) fell to the ground, with § 87(2)(b) landing on top. § 87(2)(b) dropped between six and eight Oxycodone pills that he had in his hand onto the ground. Detective Desantis, Sergeant Hillery, and § 87(2)(b) rolled around on the ground for a few minutes before the officers were able to handcuff him. Detective Desantis and Sergeant Hillery used grappling moves and grabbed at § 87(2)(b)'s arms in an attempt to gain his compliance. § 87(2)(b) however, flailed his arms and repeatedly pulled away from the officers. Detective Desantis noted that he may have punched § 87(2)(b) in the body during the struggle, but was not sure if he did so. Detective Desantis did not observe Sergeant Hillery punch, kick, or otherwise strike § 87(2)(b) but noted that that part of the block is dark and visibility is poor. Detective Desantis and Sergeant Hillery were the only officers involved in § 87(2)(b)'s apprehension. Once handcuffed, § 87(2)(b) became highly cooperative and began to cry. § 87(2)(b) apologized for selling drugs and stated that he would not do it again. There were no other civilians in the area. Detective Desantis did not observe any injuries on § 87(2)(b) who did not complain of injury.

Subject Officer: SERGEANT ANDREW HILLERY (Staten Island Narcotics)

- *Sergeant Andrew Hillery is a § 87(2)(b)-old white male who is 5'9" tall and weighs 190 pounds. Sergeant Hillery has brown hair and hazel eyes.*
- *On September 4, 2010, Sergeant Hillery worked from 2:25PM to 11:00PM. Sergeant Hillery was dressed in plainclothes and was initially assigned to administrative duty. At 9:00PM, however, Sergeant Hillery joined Detective Salvatore Desantis in the apprehension auto (a gold Hyundai) for the Staten Island Narcotics field team.*

Memo Book

Sergeant Hillery had several memo book entries regarding this incident (enc. C6-C8). At 10:10PM, § 87(2)(b) was arrested for § 87(2)(b) at White Street and St. Johns Avenue. At 10:25PM, § 87(2)(b) was arrested for § 87(2)(b). At 10:30PM, § 87(2)(b) was arrested for § 87(2)(b).

CCRB Statement

On January 20, 2011, Sergeant Hillery was interviewed at the CCRB (enc. C9-C10). Sergeant Hillery's statement is summarized below.

Sergeant Hillery's account of why they were at the incident location and what transpired prior to § 87(2)(b)'s arrival to the vicinity is consistent with that of Detective Desantis. Shortly after arriving at the location, § 87(2)(b) appeared to make a phone call on her cell phone. A few minutes later, § 87(2)(b) exited his house via the § 87(2)(b) exit and approached § 87(2)(b)'s vehicle on foot. Sergeant Hillery observed § 87(2)(b) and § 87(2)(b) exchange a number of pills for American currency as he and Detective Desantis pulled up alongside of § 87(2)(b)'s vehicle. Sergeant Hillery exited the vehicle first with his shield displayed and shouted, "Police!" Sergeant Hillery did not use profanity towards § 87(2)(b) and did not hear Detective Desantis do so. Sergeant Hillery grabbed § 87(2)(b)'s arm in an effort to handcuff him, but § 87(2)(b) pulled away and ran. Sergeant Hillery gave chase. § 87(2)(b) backed out of her parking space and sped away, almost hitting Detective Desantis as she did so. Sergeant Hillery and Detective Desantis put a description of § 87(2)(b) and her vehicle over the radio so the rest of their field team could apprehend her. Sergeant Hillery caught up to § 87(2)(b) approximately half a block away and repeatedly tried to grab § 87(2)(b) by the arms and upper shoulders, but § 87(2)(b) always pulled away and Sergeant Hillery was unable to maintain his grip. § 87(2)(b) repeatedly shouted, "No! No! No!" When Sergeant Hillery managed to get a good grip on § 87(2)(b)'s arms, he was unable to pull him to the ground. At that time, Detective Desantis ran over and grabbed § 87(2)(b) pulling both § 87(2)(b) and Sergeant Hillery to the ground. § 87(2)(b) landed on the bottom. § 87(2)(b) rolled from side to side as Sergeant Hillery and Detective Desantis tried to hold on to his arms, which at one point, he managed to tuck under his body. At no time did Sergeant Hillery or Detective Desantis punch, kick, or otherwise strike § 87(2)(b). Sergeant Hillery did not hear § 87(2)(b) complain that an officer had struck him. Sergeant Hillery and Detective Desantis were the only officers involved in § 87(2)(b)'s apprehension. It took less than a minute to handcuff § 87(2)(b).

Oxycodone was recovered from the ground near where § 87(2)(b) was apprehended. § 87(2)(b) had scrapes on his face, but Sergeant Hillery did not see how exactly he obtained his injury. Sergeant Hillery noted, however, that it appeared as if it were road rash/concrete burn and that § 87(2)(b) probably obtained it when he was taken to the ground and landed at the bottom of the pile. § 87(2)(b) did not complain of any additional injuries. After he was handcuffed, § 87(2)(b) became very apologetic and cried. There were no officers injured during § 87(2)(b)'s apprehension.

Witness Officers: DETECTIVE MARTIN BANGHART and DETECTIVE DAVID LUPPINO (Staten Island Narcotics)

- Detective Martin Banghart is a § 87(2)(b)-old white male who is 5'9" tall white male who is 220 pounds. Detective Banghart has graying brown hair and hazel eyes.
- Detective David Luppino is a § 87(2)(b)-old white male who is 6'2" tall and weighs 260 pounds. Detective Luppino has brown hair and brown eyes.
- On September 4, 2010, Detective Banghart and Detective Luppino worked from 3:27PM to 12:00AM the next morning. Detective Banghart, Detective Luppino, and their partner, Lieutenant David Courtien, were dressed in plainclothes and were assigned to a gold Dodge minivan. All three officers were working within a Staten Island Narcotics field team. Detective Luppino was the driver, Lieutenant

Courtien was in the front passenger seat and Detective Banghart was in the backseat. Detective Banghart was the arresting officer.

Memo Book

Detective Banghart had several entries in his memo book regarding this incident (enc. C11-C13). At 10:10PM, § 87(2)(b) was arrested at White Street and St. Johns Avenue for § 87(2)(b) in the seventh degree. At 10:25PM, an individual was arrested at § 87(2)(b) and § 87(2)(b) for § 87(2)(b). At 10:30PM, § 87(2)(b) was arrested at Hylan Boulevard and Vermont Avenue for § 87(2)(b). Detective Luppino had similar memo book entries in which he noted that there was one arrest at each of the aforementioned times and locations (enc. C26-C28).

Arrest Paperwork

Detective Banghart completed a BADS Arrest Report and an OLBS worksheet for § 87(2)(b) (enc. C14 and C15-C16). The narratives in each of the aforementioned documents are the same, and indicate that § 87(2)(b) was observed in a hand to hand narcotics transaction with apprehended buyers. § 87(2)(b) was in possession of a quantity of a controlled substance and resisted arrest by refusing to be handcuffed and fighting in public. Detective Banghart also completed the aforementioned documents for § 87(2)(b) and § 87(2)(b) in which he indicated that they were involved in hand to hand narcotics transactions and were found to be in possession of a controlled substance (enc. C18-C23).

Medical Treatment of Prisoner Form (MTPF)

Detective Banghart completed a MTPF for § 87(2)(b) in which he noted that § 87(2)(b) sustained bruising and swelling to the right side of his face while resisting arrest (enc. C17). § 87(2)(b) refused medical attention at the scene. § 87(2)(b) signed the MTPF.

CCRB Statement

On February 22, 2011, Detective Banghart was interviewed at the CCRB (enc. C24-C25). On March 16, 2011, Detective Luppino was interviewed at the CCRB (enc. C29-C30). Their statements are summarized below and the inconsistencies are noted.

Detective Banghart, Detective Luppino, and Lieutenant Courtien and were in the middle of a buy and bust operation when they received a radio communication from Detective Desantis and Sergeant Hillery, who indicated that they were attempting to apprehend an individual at § 87(2)(b) and § 87(2)(b). As per Detective Luppino, there was no additional information contained in the call. Detective Banghart indicated, however, that Detective Desantis and Sergeant Hillery also informed the team that a second individual fled the scene in a white vehicle. Detective Banghart, Detective Luppino, and Lieutenant Courtien responded to § 87(2)(b) and § 87(2)(b) stopped their vehicle, but did not exit the vehicle. At that time, Detective Banghart and Detective Luppino observed a male individual, identified as § 87(2)(b) rolling around on the ground and flailing his arms, seemingly in an attempt to prevent Detective Desantis and Sergeant Hillery from handcuffing him. Detective Desantis and Sergeant Hillery attempted to grab § 87(2)(b)'s arms and utilized grappling and wrestling moves in an effort to restrict § 87(2)(b)'s movement and get him under control. Neither Detective Banghart nor Detective Luppino observed Detective Desantis or Sergeant Hillery punch, kick, or otherwise strike § 87(2)(b). Neither Detective Banghart nor Detective Luppino heard Detective Desantis or Sergeant Hillery use profanity towards § 87(2)(b).

Detective Banghart, Detective Luppino, and Lieutenant Courtien did not become involved in § 87(2)(b)'s apprehension because Detective Desantis and Sergeant Hillery told them to follow a female, identified as § 87(2)(b) who fled the scene in her white vehicle. Detective Banghart, Detective Luppino, and Lieutenant Courtien were at the location for a matter of seconds before they drove after § 87(2)(b).

§ 87(2)(b) Neither Detective Banghart nor Detective Luppino observed any additional officers become involved in § 87(2)(b)'s apprehension.

Detective Banghart, Detective Luppino, and Lieutenant Courtien stopped § 87(2)(b)'s vehicle at the intersection of Hylan Boulevard and Vermont Avenue and placed her under arrest. As per Detective Banghart, they left § 87(2)(b) with the Detective Lawrence Cognato and Detective Matthew Fried, who were assigned to the prisoner van, while they returned to § 87(2)(b) and § 87(2)(b). By the time they returned, § 87(2)(b) was in handcuffs. § 87(2)(b) had bruising and red marks around his eye, but Detective Banghart did not see how or when he obtained this injury. Detective Banghart asked § 87(2)(b) if he wanted medical treatment, and presented him with a MTPF. § 87(2)(b) refused medical treatment at that time and signed the MTPF confirming that was the case. As per Detective Luppino, however, they did not return to § 87(2)(b)'s arrest location. When the prisoner van arrived to pick up § 87(2)(b) was already inside. Detective Luppino observed abrasions to § 87(2)(b)'s face and eye area, but did not see when or how he obtained them.

Witness Officer: DETECTIVE LAWRENCE COGNATO (Staten Island Narcotics)

- *Detective Lawrence Cognato is a § 87(2)(b)-old white male who is 5'11" tall and weighs 190 pounds. Officer Cognato has brown hair and brown eyes.*
- *On September 4, 2010, Detective Cognato worked from 3:27PM to 12:00AM the next morning. Detective Cognato and his partner, Detective Matthew Fried, were dressed in plainclothes and were working with their Staten Island Narcotics field team. Detective Cognato and Detective Fried were assigned to the prisoner van, which was a black Ford. Detective Cognato and Detective Fried worked together for the duration of their tour and did not switch partners or vehicles at any point.*

Memo Book

In his memo book, Detective Cognato noted that at approximately 10:25PM, one person was arrested at § 87(2)(b) and § 87(2)(b) (enc. C31-C33).

CCRB Statement

On March 8, 2011, Detective Cognato was interviewed at the CCRB (enc. C34-C35). Detective Cognato's statement is summarized below.

At approximately 10:25PM, Detective Cognato and Detective Fried received a radio transmission from an unknown member on their field team asking them to respond to § 87(2)(b) and § 87(2)(b) for prisoner transport. A few minutes later, Detective Cognato and Detective Fried arrived at the location. Sergeant Hillery and Detective Banghart were already at the location, but Detective Cognato did not recall which, if any, other members of his field team were also present. At no time did Detective Cognato observe any member of his field team punch or otherwise strike § 87(2)(b). At no time did Detective Cognato do so. At no time did Detective Cognato hear a member of his field team use profanity toward § 87(2)(b). Neither Detective Cognato nor Detective Fried witnessed § 87(2)(b)'s apprehension and § 87(2)(b) was already handcuffed when they arrived. Detective Cognato did not recall § 87(2)(b)'s demeanor. Detective Cognato noted that the area is not well lit, so he was unable to see if § 87(2)(b) had any injuries. § 87(2)(b) did not complain of injury.

Medical Records

Ambulance Call Report

On September 5, 2010, an ambulance responded to the 120th Precinct to treat § 87(2)(b) (enc. D1). As per the EMT notes, § 87(2)(b) was in the holding cell at the 120th PCT when he complained of a headache. § 87(2)(b) told the EMT that he was hit in the face the day before and as a result had a headache. § 87(2)(b) presented with redness around his right eye and cheek. § 87(2)(b) was removed to § 87(2)(b) with a police escort.

§ 87(2)(b)

Upon arriving at § 87(2)(b) on September 5, 2010, § 87(2)(b) informed medical personnel that he was struck multiple times with fists to face and head by police officers when he was arrested (enc. D2-D16). § 87(2)(b) presented with swelling and tenderness around his right eye and cheek. As per x-rays and CTscans, § 87(2)(b) did not sustain any facial fractures. § 87(2)(b) was diagnosed with head contusions and abrasions and treated for an asthma attack. He was also diagnosed with a “black eye.” The hospital noted that § 87(2)(b) had a history of seizures and that he had his last seizure in June of 2010. The hospital also noted that § 87(2)(b) had previously been taking Oxycodone to treat persistent back pain, but after briefly taking methadone, he was no longer taking any pain medications.

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) after having a seizure (enc. D17-D39). As per his reported history, § 87(2)(b) also suffered a seizure in June of 2010. § 87(2)(b) was diagnosed as having a seizure, but tests failed to identify any possible cause(s) of his seizure. § 87(2)(b) was not prescribed any seizure medication. At the time of his visit, § 87(2)(b) presented with multiple abrasions to his face, upper, and lower extremities.

NYPD Documents

Medical Treatment of Prisoner Form (MTPF)

A second MTPF was created for § 87(2)(b) on September 5, 2010, after he complained of pain to his chest and head. It is noted that his right eye is swollen. § 87(2)(b) was removed to § 87(2)(b) (enc. E15).

Disposition of Arrest

- § 87(2)(b)'s criminal case remains active and the next scheduled court date is § 87(2)(b) (enc. F1).

Status of Civil Proceedings

- As of March 24, 2011, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York in regards to this incident.

Civilian Criminal History

- As of March 24, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) or § 87(2)(b).

Civilian CCRB History

- This is § 87(2)(b) and § 87(2)(b)'s first and only CCRB complaint (enc. A2-A3).

Subject Officer CCRB History

- The CCRB has not substantiated any allegations against Sergeant Hillery in his eleven years of service to the NYPD (enc. A1).

Conclusion

Identification of Subject Officers

- Sergeant Hillery acknowledged that he interacted with § 87(2)(b).

Investigative Findings and Recommendations

- **Allegation A) Physical Force: Sergeant Andrew Hillery used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that a police officer exited from the rear passenger side of a vehicle, approached him from behind, and punched him in his right eye. § 87(2)(b) noted that there was no verbal command or physical contact that precipitated this act, and that presumably, it was done to stop him. § 87(2)(b) also indicated that the officer who did so was the first officer who engaged him in physical contact. All of the interviewed officers, however, indicated that Sergeant Hillery and Detective Desantis were the only officers who were involved in § 87(2)(b)'s apprehension. Sergeant Hillery reported that he was sitting on the passenger side of his vehicle and that he was the officer who initiated contact with § 87(2)(b). Both Sergeant Hillery and Detective Desantis noted that there were no other officers sitting in the backseat at the time. As a result, the investigation determined that Sergeant Hillery is the subject of this allegation.

Sergeant Hillery denied punching § 87(2)(b) at any time during the incident. Detective Desantis did not know if Sergeant Hillery punched § 87(2)(b). The statements provided by the other members of the field team suggest that they all arrived at the location after initial contact was made. While § 87(2)(b) was present at the time this would have occurred, she noted that she did not see much of what occurred and was unable to articulate precisely what occurred before § 87(2)(b) was taken to the ground.

All of the interviewed officers, with the exception of Detective Desantis and Detective Cognato, conceded that § 87(2)(b) suffered red marks and abrasions to the right side of his face during his apprehension. By the time his Prisoner Movement Slip Photo was taken at 1:13AM on September 5, 2010, however, § 87(2)(b) had noticeable redness and minor swelling that appeared in a circular formation around his right eye. When § 87(2)(b) requested medical treatment on the afternoon of September 5, 2010, his eye was swollen and when he was treated at § 87(2)(b), he was diagnosed with a black eye as well as head abrasions and contusions. § 87(2)(b) told both the EMTs who treated him at the 120th Precinct as well as the medical personnel who treated him at § 87(2)(b) that his facial injuries were a result of being struck in the face and head during his September 4, 2010 arrest.

§ 87(2)(g)

• **Allegation B) Discourtesy: Sergeant Andrew Hillery spoke rudely to** § 87(2)(b)

§ 87(2)(b) alleged that the same officer who punched him in the eye stated to him, "Police, asshole!" As stated above, Sergeant Hillery is the subject of that particular force allegation. Therefore, this discourtesy allegation is also pleaded against him.

Sergeant Hillery noted that he shouted "Police!" when he exited his vehicle, but both he and Detective Desantis denied using profanity towards § 87(2)(b). The other officers who were interviewed all suggested that they were not present when this statement was supposedly made and indicated that they did not hear Sergeant Hillery and/or Detective Desantis use profanity towards § 87(2)(b) on any other occasion.

§ 87(2)(b) noted that she did not hear any of the officers say anything upon exiting the vehicle, § 87(2)(g)

• **Allegation C) Officers used physical force against** § 87(2)(b)

§ 87(2)(b) alleged that multiple officers repeatedly punched and kicked him while he was on the ground, a claim that was supported by § 87(2)(b). As stated in allegation A, however, the investigation determined that Sergeant Hillery and Detective Desantis were the only officers involved in § 87(2)(b)'s apprehension. Sergeant Hillery denied striking § 87(2)(b) and while Detective Desantis conceded that he

may have punched § 87(2)(b) in the torso while they were struggling on the ground, he was unable to definitively state if he did so.

Patrol Guide Procedure 203-11 states that officers can use the minimum amount of force necessary to overcome resistance and effect an arrest (enc. I-II). Sergeant Hillery and Detective Desantis reported using wrestling and grappling techniques to subdue § 87(2)(b) a claim that was supported by Detective Banghart and Detective Luppino, who observed a portion of their interaction. During his CCRB interview, § 87(2)(b) alleged that he suffered bruises on his body, abrasions on his knees, and a cracked rib on his right side. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Team: 3

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date